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GROWTH OF LIBERALISM IN JAPAN

Two Addresses Delivered by

TSUNEJIRO MIYAOKA
of the Bar of Japan

I

Before the American Bar Association at Cleveland, Ohio
on August 29, 1918

II

Before the Canadian Bar Association at Montreal
on September 5, 1918

WASHINGTON, D. C.
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PREFACE

It is a significant mark of the growth of international influence and international opinion that both the American Bar Association and the Canadian Bar Association should have invited a representative of the Bar of Japan to deliver formal addresses at their annual meetings of 1918. It is almost equally significant that Mr. Miyaoka, to whom these most complimentary invitations were addressed and who was fortunately able to accept them, took as his general topic the Growth of Liberalism in Japan. In tracing the history of the safeguard of civil liberty in Japan and the growth of representative government in that nation, Mr. Miyaoka made a timely and most helpful contribution to our understanding of the spirit and underlying tendencies in contemporary Japanese life and thought.

Any people which is engaged in sedulously safeguarding civil liberty and in systematically developing representative government is genuinely a liberal people. Liberalism has, or rather should have, a pretty definite connotation when used of English and American political thought and action. It acquired that connotation through more than three hundred years of struggle, strife and constructive progress. It is a splendid and a noble term, and for that very reason there are those who would now tear it from its historic foundations and apply it to all forms of crude and destructive radicalism and repression of individual liberty and opportunity. Such a clear misuse of the term Liberal is to be stoutly resisted wherever it makes its appearance. That which Mr. Miyaoka traces with such fulness of knowledge is genuine Liberalism, and not a false and specious form of political development which masquerades under that name.

Mr. Miyaoka's visit to the United States and to Canada has been the occasion for renewed demonstrations of the high appreciation in which the peoples of those countries hold the people of Japan and of the growing solidarity of opinion among the nations who, between them, influence every form of public life in lands which touch upon the Pacific Ocean.

NICHOLAS MURRAY BUTLER,
Acting Director.

November 1, 1918.

I

THE SAFEGUARD OF CIVIL LIBERTY IN JAPAN

BY

TSUNEJIRO MIYAOKA

OF THE BAR OF JAPAN

Presented at the meeting of the American Bar Association at Cleveland, Ohio, August 29, 1918

The honor you have conferred upon me by inviting me to be your guest and to deliver an address before you today is regarded by the Bar of Japan as a tribute paid to it by a sister organization of older standing, and consequently of greater prestige. At the dinner given me by the members of that bar on the eve of my departure, I was instructed by them to convey to you their cordial greetings and the assurance that they hope the day will not be far distant when they may have the pleasure of having one of you to be our guest and deliver an address before us.

The Constitution of Japan[1] provides among other things that the Japanese subjects may, according to qualifications determined in laws or ordinances, be appointed to civil or military or any other public offices equally; that Japanese subjects are amenable to the duty of paying taxes, according to the provisions of law; that Japanese subjects shall have the liberty of abode and changing the same within the limits of law; that no Japanese subject shall be arrested, detained, tried or punished unless according to law; that no Japanese subject shall be deprived of his right of being tried by the judges determined by law; that, except in cases provided for in the law, the house of no Japanese subject shall be entered or searched without his consent; that, except in the cases mentioned in the law, the secrecy of the letters of every Japanese subject shall remain inviolable, that the right of property of every Japanese subject shall remain inviolable, subject to such provisions of law as may be enacted for public benefit; that Japanese subjects shall, within limits not prejudicial to peace and order, and not antagonistic to their duties as subjects, enjoy freedom of religious belief; that Japanese subjects shall, within the limits of law, enjoy the liberty of speech, writing,

[1] The Constitution of Japan was promulgated by the late Emperor Mutsuhito on February 11, 1889, and took effect from November, 1890.

publication, public meetings and associations.[1] These guarantees would be of little value unless the Constitution itself provided for the machinery, legislative, executive, and judicial, whose duty it is to see to it that these guarantees are successfully carried out in practice.

The legislative power of Japan is vested in the Emperor and a bicameral legislature called the Imperial Diet. The Diet consists of an upper chamber known as the House of Peers and a lower chamber known as the House of Representatives. The upper chamber corresponds to the House of Lords, and the lower to the House of Commons in Great Britain.

Article 37 of the Constitution of Japan provides:

> Every law requires the consent of the Imperial Diet.

Article 62 of the same document provides, in effect, that the imposition of a new tax or a modification of the existing rate of any tax, except all such administrative fees as are in the nature of compensation for a special service rendered by a government official shall be determined by law. The same article also provides that the raising of national loans and the contracting of other liabilities to the charge of *fiscus* (National Treasury) requires the consent of the Imperial Diet. Article 65 of the Constitution of Japan provides:

> The budget shall be first laid before the House of Representatives.

The time honored adage of the British Constitution that the House of Commons holds the purse string is therefore worked out in practice in Japan. The Emperor is the chief executive as well as the commander in chief of the army and navy, but the English constitutional principle that the "King can do no wrong" also finds its place in the Constitution of Japan, for it says "the Emperor is sacred and inviolable."[2] The question remains "If the sovereign can do no wrong, who is responsible?" In the excellent address which he delivered at your meeting last year, Mr. Robert McNutt McElroy, of New Jersey, recalled the

[1] See Articles 19 to 29 of the Constitution of Japan.
The Constitution makes the reservation to the effect that the various guarantees are subject to the exercise of powers appertaining to the Emperor in times of war or in cases of a national emergency. When the Emperor declares a state of siege, there may be an entire or a partial suspension of those guarantees. It is the prerogative of the Crown to declare, in time of war or insurrection, a state of siege in any particular locality, or over the whole Empire. However, the Emperor himself is not authorized to determine how far the constitutional guarantees of civil liberty may be suspended. The law provides the effect which the Imperial declaration of a state of siege shall have upon the enjoyment of civil liberty.

[2] Article 3 of the Constitution of Japan.

words used by William Pitt in the resignation he presented to King George the Third. That Minister of the Crown declared,

> I consider myself called to the post of Prime Minister by the people of England, to whom I consider myself responsible. I will not remain responsible for measures I am no longer allowed to guide.

The Constitution of Japan is silent as a sphinx when it comes to the question to whom the Ministers of State are held accountable. Article 55 of the Constitution merely declares

> The respective Ministers of State shall give their advice to the Emperor, and be responsible for it.
>
> All laws, Imperial Ordinances, and Imperial Rescripts of whatever kind that relate to the affairs of State require the counter signature of a Minister of State.

If any law, ordinance, or a rescript is issued and made public by the Emperor over his own signature, but without the counter-signature of one or more Ministers of State, such law, ordinance or rescript is null and void. Reading Article 55 side by side with the declaration of Article 3 to the effect that "the Emperor is sacred and inviolable," there will be no doubt in the mind of an American jurist as to the party to whom the Ministers of State, collectively called the Cabinet, are accountable. Thus far it has been maintained in practice that the responsibility of the Cabinet Ministers is one owing to the Crown and not to the Imperial Diet. At acute stages of Japan's internal political struggle this point comes up perennially for debate in the House of Representatives; but manifestly it is a point on which men will differ according as they take conservative or liberal views of things.

Now that the great Emperor who gave a written Constitution to his people, as well as the majority of the great men who served him in the work, are no longer with us, many of the things that were thought and said at the counsel table when the draft of the Constitution was examined, discussed and adopted, will never come to light. The Emperor Mutsuhito was so broad in his vision, and to his piercing eye the remote future was so near, that at times his Ministers of State failed to see what it was that prevented His Majesty from giving Imperial sanction to a measure recommended. To me Article 55 of the Constitution of Japan is more significant for what it omits to say than for what it mentions. Compare the first paragraph of Article 55 with Article 5, for example, which declares "the Emperor exercises the legislative power with the consent of the Imperial Diet"; or with Article 37 which says, "Every law requires the consent of the Imperial Diet." The language of the Japanese Constitution is so

terse, so simple and so direct, that it is evidently a work of a group of men who lacked neither clearness of vision nor precision in the art of expressing thoughts. We shall probably do justice alike to the greatness of the Emperor, whom we now call by his posthumous title Meiji, as well as to the faithful devotion of his able Ministers, if we take the view that the first paragraph of Article 55 was purposely left a political sphinx. The transition of Japan from an absolute to a constitutional form of monarchy in 1890 was of course surrounded by many dangers.

The total collapse of Russia, as well as the partial success of the republican form of government in China, are but reminders of a political wisdom which the world has known for ages. No vital change in the form of government can be adopted by a people without risk of the complete undermining of the reign of law. There is always a danger of the whole people running mad in the ecstasy of newly acquired liberty and in the consciousness of a newly vested power. To you who are so familiar with the growth of the jurisdiction of the Court of Chancery in England as well as in the British colonies on this continent, it is unnecessary for me to say that laws are modified not merely by acts of legislature, but are susceptible of change by interpretation. Nor is the reversal of an interpretation the sole prerogative of law courts. We see among us today familiar faces of many distinguished jurists who at one time or another, as Attorneys General of the United States, or of one or another of the several States of the Union, deliberately changed the course of administration of law, so far as the executive branches of the respective governments with which they were identified were concerned. Is it not reasonable to suppose that the Japanese nation, in its wisdom and in its own time, will solve its constitutional problem in a manner best adapted to its genius and the requirements of the age?

Article 57 of the Constitution of Japan provides that "The judicature shall be exercised by the courts of law, according to law, in the name of the Emperor" and that "The organization of the courts of law shall be determined by law." The Constitution further provides that the "Judge shall be appointed from among those who possess proper qualifications according to law and that no judge shall be deprived of his position unless by way of criminal sentence or disciplinary punishment, the rules of which shall be determined by law."[1]

1. Personal Liberty

As the most important of civil liberties, let us take up first of all the question of protection accorded to persons, that is to say the question of arrest,

[1] See Article 58 of the Constitution of Japan. See also Law Relating to the Organization of Law Courts, which was promulgated on February 10, 1890, and took effect from November 1, 1890.

detention, trial and punishment. This phase of the subject can not be made intelligible without saying a few words regarding the public procurators and the judges of preliminary examination. There are four grades of law courts in Japan apart from certain special courts such as the Administrative Court, the Maritime Court or the special jurisdiction of the Patent Office in matters relating to patents, trade marks, etc.[1]

To every court is attached an office of the public procurators. The public procurators are regarded as one body. It is a body of state attorneys at the head of which stands the Attorney General who acts as the chief procurator of the Court of Cassation and has under his control all the other state attorneys. It is this body of state attorneys which conducts prosecutions in behalf of the state. In every District Court there are one or more judges of preliminary examination. They are named by the Ministers of Justice from among the judges of the court in pursuance of a provision contained in the Law of the Organization of Law Courts.[2] It is this system of preliminary examination that has so often been held up by the enemies of Japan as the machinery for the oppression of her people. This is no more nor less than an examination by the *juge d'instruction* in France, and serves precisely the same purpose as an indictment before a grand jury in this country.

Just as a defendant is discharged under the Anglo-American system, if the

[1] The lowest court is called the Local Court. The one above it is the District Court. Then come the Courts of Appeal, and above all there is one Court of Cassation which is the highest tribunal of the Empire and unifies the interpretation of laws both in criminal and civil matters. Each of the courts except the lowest has one or more civil and criminal departments. In the lowest court, if there are two or more judges, the work may be divided among the judges in accordance with the rules laid down by the Minister of State for Justice, so that it is quite possible to have one judge attending to criminal matters and another judge attending to civil matters only.

The jurisdiction of the lowest court in criminal matters is limited; firstly, to crimes punishable with imprisonment not exceeding thirty days or fine not exceeding twenty yen, which is equivalent to ten dollars United States currency. (Japan is a gold standard country, and its currency is on the decimal system. *Yen*, which is the standard unit, is equivalent to fifty cents of United States currency, though at present the rate of exchange is slightly against the United States.) Secondly, the criminal jurisdiction of a Local Court is limited to such cases only as have not been submitted to preliminary examination. Whether a case shall be submitted to preliminary examination or not is determined by the following rules. If the crime with which the defendant is charged is one that makes him liable to capital punishment or imprisonment for life, or if the prescribed minimum term of imprisonment is one year or more, then the public procurator must ask for a preliminary examination. It is only when the judge of the preliminary examination decides that the case shall go to trial, that the public procurator is permitted to bring the case before the court in the usual way. In cases where, as the result of investigation undertaken by him, the public procurator is satisfied that the offense is one for which the minimum term of imprisonment is less than one year, with or without hard labor, then in such case it is optional for him either to ask for preliminary examination or to submit the case forthwith to the public trial of the District Court to which he is attached.

[2] See Article 21 of Law of Organization of Law Courts, promulgated as Law No. 6 on February 10, 1890.

grand jury does not find a true bill against him, so under the Franco-Japanese system a person is not subjected to the indignity of a public trial on an alleged offense of a serious character, unless and until a judge of preliminary examination has thoroughly examined the case and pronounced his judgment that there is a *prima facie* case against the defendant.[1] A tribunal is composed of three judges both in a District Court as well as in a Court of Appeals. In the Local Court, which has jurisdiction in minor offenses only, the judge sits alone; in the Court of Cassation five judges compose a tribunal which hears argument for and against the appeal on error of law. In all cases, without exception, both the prosecution as well as the defendant has the right of appeal. A case originating in a Local Court goes on appeal to that District Court in whose jurisdiction that Local Court is situated. A case tried in the first instance in one of the District

[1] A judge of preliminary examination is not authorized to issue a warrant of arrest against the defendant forthwith upon the filing of a prosecution by a public procurator except in cases where the defendant has no determined place of abode, where there is danger of his escape or his tampering with the evidence of his guilt, or where the defendant is charged with the attempt of a criminal act, or with duress, or intimidation, and there is actual danger of his further committing the offense. Except in such cases the judge of preliminary examination must confine himself to the issue of a writ of summons, allowing at least twenty-four hours between the service of the writ and the time the defendant is required to appear before the judge. The judge is further interdicted from issuing a writ of arrest until and after he has personally examined the defendant and is satisfied that the latter is charged with a crime which upon conviction makes him liable at least to a penalty of imprisonment. (See Articles 69, 72 and 75 of the Code of Criminal Procedure of Japan.) The Code of Criminal Procedure further provides that whenever and as soon as a judge of preliminary examination is persuaded that the act with which the defendant is charged does not make him liable to imprisonment with or without hard labor or any heavier penalty than that, he must forthwith cancel the writ of detention and set the prisoner free. (Article 86.) The law dequires the judge of preliminary examination to begin the investigation of the case submitted to him by a personal examination of the defendant himself, that is to say, the examination of the defendant must precede the examination of any other party, complaint, witness or party in interest. (Article 93.) The judge of preliminary examination is expressly prohibited from taking recourse to any form of threat, intimidation or falsehood with a view to extract from the defendant a confession of his guilt. (Article 94.)

The law declares that no visit to the place of the commission of the offense, or any other place, domiciliary searches, seizures of things, or examination of a defendant or a witness can be conducted by a judge of preliminary examination without the attendance of a clerk of the court who shall make a minute of proceedings and sign the same with the judge himself. (See Article 92 of the Code of Criminal Procedure.) As the examination of the defendant by the judge progresses, the clerk of the court must record the questions of the judge and the answers given by the defendant. Upon completion of the examination the clerk must read the record to the defendant, whereupon the judge shall ask the defendant whether it is satisfactory to him. If the defendant requests the record should be changed in any particular, the judge must ask in what manner he wishes the record altered, and the questions as well as the answers given must be recorded in the minutes of the examination. (See Articles 95 and 96 of the Code of Criminal Procedure.) The defendant has the right to have a copy of the minutes of his examination supplied to him. (Article 97.) It is the duty of the judge of the preliminary examination to investigate all the facts which are favorable to the defendant equally as those that are against him. (Article 103.)

Courts goes on appeal to that Court of Appeal which has jurisdiction over that District Court. There is always a new trial on appeal. On an error of law there is always a further appeal from the decision of the court which heard the case on appeal, whether that court may be a District Court or a Court of Appeal. The appeal on error goes direct to the Court of Cassation. In this way the uniformity of the interpretation of law is maintained. In the Court of Cassation there are several civil and criminal departments. In the event that one of the civil or criminal departments of the Courts of Cassation finds it proper to render a judgment differing on a point of law from the decision previously rendered by one or more departments of the same court, then the presiding judge of that department must ask the president of the court to convene a joint sitting of all the criminal or all the civil departments, or of all the departments taken together. In such a case the arguments for the appellant and the respondent are heard in the plenary sitting of the departments convened or the entire court, as the case may be, and the decision is given by the court so sitting.[1]

The Code of Criminal Procedure declares that no restraint may be placed on the person of a defendant at his public trial, that he shall be free to employ one or more counsel to defend him, and that with the permission of the court he may even employ a person other than a qualified attorney at law to act as his defender. If the defendant is younger than fifteen years of age or a woman, deaf or dumb, or shows symptoms of unsound mind, or if for any other reason the court deems it desirable to employ a counsel, the court may, upon the motion of the prosecution or of its own accord, appoint a counsel to defend the person accused.[2]

2. Freedom from Domiciliary Visit

Cases in which officers of the law are authorized to go into an inhabited house without the consent of the occupant, are limited, firstly, to cases where a policeman or a gendarme armed with a warrant of arrest has reason to believe that the person named on such warrant is hidden in his own or in another man's residence. In such a case the presence of the mayor of the city, town or village, as the case may be, or the presence of two neighbors is required in order to enable the policeman or the gendarme to make the search in the premises. Such mayor or neighbors must sign with the policeman or gendarme the minutes of the proceedings prepared by the latter.[3]

Secondly, judges of preliminary examination are authorized to make similar

[1] See Law of Organization of Law Courts, Articles 49 and 54.
[2] Code of Criminal Procedure, Articles 177, 179, 179 *bis*.
[3] *Ibid.*, Article 78.

domiciliary visits to the house of a person charged with the commission of a crime or of a person suspected of keeping in his possession a document or a thing that would prove the guilt of the accused. In case the defendant or the person suspected of keeping in his possession important proof of the guilt of the accused, is absent from his home, the presence of a member of his family or a relative living with him, and in the latter's absence the presence of the mayor of the city, town or village, as the case may be, is required.[1] No domiciliary search may be made either by the police or gendarme or by a judge of preliminary examination after sunset and before sunrise except in hotels, restaurants and other like places which may be visited during the hours the place in question is actually open to the public.[2]

Thirdly, there is a statute called the Law of the Exercise of Administrative Authority which empowers competent administrative officials to enter into houses without the consent of the occupant even during the hours between sunset and sunrise, in cases where such officials have reason to believe that there is imminent danger to life or property, or that gambling or prostitution is actually going on in the premises. The same law, moreover, authorizes such competent administrative officials to visit hotels, restaurants and other similar public establishments during the time they are open to the public.[3]

3. Privacy of Correspondence

According to Article 133 of the Penal Code of Japan, a person who has opened a sealed letter of another without justifiable cause is liable to imprisonment, with or without hard labor, for a term not exceeding one year or a fine not exceeding two hundred yen.

Article 52 of the Postal Law of Japan provides that a person who has tampered with mail matter while in the custody of the postal administration, or has delivered it to a person other than the rightful addressee is punishable by imprisonment, with or without hard labor, for a term not exceeding three years or a fine not exceeding five hundred yen.[4]

Similar penal provisions are found in the Telegraph Law of Japan with respect to the crimes of tampering with sealed telegraphic messages or divulging matters forming the subject of correspondence by telegraph or telephone.[5] The Penal Code contains further provisions regarding the destruction of official docu-

[1] Code of Criminal Procedure, Article 104.
[2] *Ibid.*, Articles 78 and 104.
[3] See Article 2 of the Law of Exercise of Administrative Authority of June 2, 1900.
[4] Postal Law of Japan of March 13, 1900.
[5] Articles 31 and 35 of the Telegraph Law of Japan. (Law No. 59 of March 14, 1900.)

ments and papers, writings, memoranda and other instruments belonging to others that relate to rights and duties.[1]

4. Liberty of Conscience

There is no law in Japan that relates to the limitation of faith or that gives preference to any form of religion. As there are so many temples and shrines of Buddhist and Shinto religion in the country, there is naturally a large body of statutes and regulations relating to the secular administration of sects or the enjoyment of property rights by ecclesiastical corporations. The wording of Article 28 of the Constitution of Japan is so simple and direct that it requires no supplementary legislation to give effect to its provision. Freedom of religious belief is only limited by the condition that the belief shall not be prejudicial to peace and order, nor incompatible with the duties which an individual as a Japanese subject owes to the sovereignty of the Empire.

5. Right of Property

Now proceeding to an examination of legal limitations to rights of property I would state that the expropriation of land for educational, scientific or philanthropic purposes, as well as for such public purposes as railroads, public highways, bridges, river embankments, canals, docks, harbors, aqueducts, transmission of electricity, laying of gas pipes, sewer pipes, etc., is permitted in Japan as in many other countries. The Cabinet, that is to say the office of the Prime Minister, determines whether a certain work contemplated by a given individual or corporation is of such a character as to warrant the application of the Expropriation Law to land needed for the furtherance of that work. In the affirmative case the Cabinet issues a public notice to that effect, whereupon the local governor of the place where the expropriation will take place gives a public notice specifying the pieces of land affected by the decision of the Cabinet, or otherwise notifies the parties whose rights are involved.

The party that is entitled to expropriate must negotiate with the owner of the land concerned as to the amount of compensation payable. In the event the parties fail to come to an agreement, the party in whose behalf the Expropriation Law has been set in motion, is authorized to ask for the award of a land expropriation commission composed of seven persons. The local governor is the chairman of that commission, while three of the six members are appointed from among higher officials of the Imperial Government, and the remaining three are chosen by the prefectural council from among their own number. A prefec-

[1] Penal Code of Japan, Articles 258 and 259.

tural council is an elective body and corresponds to the board of aldermen in cities. There is one prefectural council to each local government. An owner of the land unsatisfied with the amount of compensation awarded by the land expropriation commission may bring an action for the determination of the amount of compensation in the law courts against the party trying to expropriate him. On all points covered by the decision or award of the land expropriation commission other than what relates to compensation, the party that believes its right infringed by the award may bring an action before the Administrative Court.[1]

Conditions relating to military exactions are determined by Law No. 43 of August 12, 1882. Such exactions are only permissible if required by the Japanese Army or Navy in connection with its mobilization. That law also requires that whatever is expropriated must be paid for, and minute provisions are embodied in that law relating to the assessment of the amount of compensation due the owner of things appropriated.

6. Safeguard Against Inequitable Taxation

The provisions of the Constitution declaring in effect that no tax can be imposed except in pursuance of a law, and that all laws require the consent of the Imperial Diet are perfectly clear. However it is permissible to inquire how the taxation laws are enforced. It is obviously impossible to go into a careful examination of such a matter within the narrow compass of a single address. However the democratic spirit which pervades the legislation of Japan relating to the levy and collection of taxes will be apparent if I refer to certain features of the Business Tax Law and the Income Tax Law.[2]

All over the country there are scattered about a large number of internal taxation offices which in the United States would be called offices of the collectors of internal revenue. The entire country for the purposes of the collection of internal revenue is divided into supervising districts, so that within the jurisdiction of an internal taxation supervising officer there are a number of internal taxation offices, each of which has its own district.

The factors which are to serve as the basis of calculation in the assessment

[1] See Expropriation Law of March 7, 1900, as amended by Law No. 15 of 1914. Regarding the organization and jurisdiction of Administrative Court, see Law No. 48 of June 30, 1890.

[2] Business Tax Law now in operation was promulgated as Law No. 33 on March 28, 1896.

Income Tax Law now in operation is the Revised Income Tax Law of February 13, 1899.

See particularly Articles 26, 27 and 28 of the Business Tax Law and Articles 11, 12, 14, 15, 28, 31, 36, 37 and 39 of the Income Tax Law.

of income or business tax are specified in the laws themselves, but the question as to which schedule or what factors stated in the Business Tax Law are applicable to a particular case or what the amount of taxable income is, is a question of fact to be determined in each case. For the determination of such facts the Business Tax Law as well as the Income Tax Law requires that assessment committees shall be chosen from among the taxpayers themselves. The election is by double election, that is to say, the electoral college is chosen by the taxpayers at the rate of one elector to every ten taxpayers; provided, however, that not more than twenty electors shall be appointed in each electoral district. The twenty men so chosen elect the necessary number of men to form the assessment committee.

If any taxpayer is dissatisfied with the assessment made by the committee and communicated to him by the government, he has a right of appeal to the government which must in turn submit the case to the investigation committee composed of three taxation officials and four members of the assessment committee. In other words the democratic element is in the majority.

If the government accepts the decision of the investigation committee while the taxpayer is dissatisfied, the recourse of the latter is an administrative action before the Administrative Court.

7. Liberty of Speech, Writing and Publication

Article 52 of the Constitution of Japan declares:

> No member of either House of the Imperial Diet shall be held responsible outside the respective Houses for any opinion uttered or for any vote given in the House. When, however, a member himself has given publicity to his opinions by public speech, by documents in print, or in writing, or by any other similar means, he shall in that matter be amenable to the general law.

The restrictions on the liberty of speech, writing and publication are contained in Law No. 36 of March 10, 1900, called the Law of Public Safety Police, the Penal Code, the Law of Publication[1] and the Press Law.[2] In none of these laws is there any restriction on the legitimate enjoyment of the freedom of speech. The Penal Code of Japan, like that of any other civilized nation with monarchical form of government, contains special clauses relating to the crime of slander and libel committed against the Emperor or members of his family, in addition to ordinary cases of slander and libel generally. The Laws of

[1] Law No. 15 of April 14, 1893.
[2] Law No. 41 of May 6, 1909.

Public Safety Police and of Publication, as well as the Press Law, provides that matters relating to the preliminary examination of offenses shall not be discussed in public speech, in printed books or pamphlets, or in the press, that criminals shall not be made objects of public encomium or approbation, that nothing tending to subvert the political institution of the country or otherwise leading to a breach of public peace, nor anything contrary to good morals shall be publicly discussed. These are measures which all civilized states adopt for their own safety. No official documents relating to diplomatic, military or other state secrets, which have not been divulged by the departments of the government concerned, may be made public, and the Ministers of State for War, for the Navy and for Foreign Affairs are authorized to prohibit publication in the press of matters which for military or diplomatic reasons should not be made public. It is impossible for me to enter at this place into a more detailed examination of the provisions of the laws referred to, but I assure you that the limitations imposed are for the good of the country.

8. Liberty of Associations and of Public Meetings

No secret society is permitted in Japan. The Law of Public Police contains regulations governing the formation of political parties, political gatherings, and outdoor demonstrations.

Conclusion

The more you see of us and the more you hear us speak, the more you will be convinced that we do things in Japan much in the same way as you do in this country. The quaint customs, the oddity of things, the picturesque in the scenery, attire and the ways of life in distant lands appeal to the imagination. In the description of Japan which travelers and sojourners from this country have given you, emphasis has been placed on points wherein we differ from you. The points of resemblance are never noted for the reason that the realities of life are prosaic. On the one hand, we have been depicted as a nation of poets who do nothing else but sit under plum blossoms, sip tea and sing the glory of the moon. On the other hand, we have been described as an exceedingly polite people who never think of their own convenience or inclination, but to whom the will and the pleasure of others are law, who consider that if their rights are invaded it is simply a matter to be met by a pleasant smile. Such an extraordinary overestimation of Japanese character, which we do not merit, serves no useful purpose. It does not draw the peoples of the two countries an inch nearer to each other, but each remains a strange people to the other.

In this great war in which the attention of all thinking men is centered, it is questioned here and there whether Japan has not misplaced herself in siding

with the Allies against the Central Empires of Europe. In the laconic brevity of mottoes and slogans there is always the danger that the vulgar and the unthinking may misinterpret the meaning intended to be conveyed. When President Wilson declared that this was a war of democracy *versus* autocracy, manifestly he did not mean that this is a war of republicanism *versus* monarchism The people of the United States are the last people on earth to deny to another people the right to choose that form of government which the latter thinks is best adapted to itself. Is not Germany's denial to some of the unfortunate people under her sway of the right to choose their own sovereignty, one of the crimes for which we hold her responsible? The United States went into this war because the German warfare against commerce was a challenge to all mankind. It is for the vindication of human right that this nation is stirred to the core.

Japan has the same ideals to which you are dedicated. We stand for the rights of humanity. If in this brief address I have made clear to you some of the fundamental principles on which our legislation is based, if I have shown that the Japanese people are not the kind of people to quietly submit to the invasion of their rights or the curtailment of personal liberty, I may congratulate myself on having contributed something towards the better understanding between our two countries.

When it is suggested that Japan is misplaced in this war because this is a war of democracy against monarchy, I see the subtle working of German propaganda. Germany is determined that Japan and the United States shall not be friends; Germany today is sowing the seeds of mistrust between us with the same insistence that has marked her activity in that direction ever since Japan has become a factor to be considered in world politics. If you will recall with what punctilious observance of the rules of civilized warfare Japan fought her wars of 1894–95 and 1904–05, and if you will consider the manner in which we safeguard the civil liberty of our people at home, you will perceive that we place justice and right over material prosperity, military efficiency, or achievements in science and in art.

II

THE GROWTH OF REPRESENTATIVE GOVERNMENT IN JAPAN

BY

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On March 14 of the lunar calendar in the year 1868 of the Christian era[1] the late Emperor, whom we would like to be known by his posthumous name Meiji Tenno, took the following oath at the sanctuary dedicated to the worship of his Imperial ancestors:[2]

1. Widely representative institutions for deliberation shall be established, and the affairs of state shall be determined in accordance with public opinion.

2. The sovereign and the people shall unite as one man in the vigorous execution of the policies of the Empire.

3. The common people no less than the civil and the military officers shall be permitted to pursue the respective objects of their lives, and we must see to it that no cause for discontent is given anywhere.

4. Unworthy customs of old shall be abolished, and things shall be adjusted in accordance with the eternal principle of justice.

5. Wisdom and knowledge shall be sought throughout the world, and the power of the Empire shall thereby be strengthened.

These five principles consecrated by the oath of the great Emperor may be said to embody the whole of the policy by means of which Japan has attained her present position among the nations of the world. The system of compulsory education so successfully carried out that the percentage of illiteracy in Japan is one of the smallest in the world. has its foundation on this Imperial oath. The representative institutions of the government now so prevalent in the central as well as the local administration of the country is the direct result of this declaration. In short the so-called Five Articles of the Imperial Oath form the

[1] On December 3 (lunar calendar) in the year 1872 Japan adopted the Gregorian calendar. In this address up to that time dates are given in the lunar calendar.

[2] Komei Tenno died on December 25, 1866, and his only son Meiji Tenno formally ascended the throne on January 9, 1867.

Magna Charta not only of political liberties but of all the social changes which have been wrought in Japan within the last fifty years.

To show you the spirit in which this oath was taken and proclaimed to the people of Japan, let me translate a paragraph from the manifesto issued by Meiji Tenno to his people on March 14, 1868. His Majesty declared:

> Since the middle ages of our history the Imperial régime has declined and powerful military families have one after another in succession exercised the real prerogative of the sovereign. Those military families invariably pretended to show the greatest respect to the Imperial Court, but the respect paid was of such a character as to remove the Emperor farther and farther away from his people. The Emperor is at once the father and the mother of the people of this country. If he is placed on a high pedestal and is worshiped, but the means of knowing the wishes, the desires and the needs of his children are cut away from him, he becomes a sovereign only in name. Then the glory of the Imperial Court becomes a sham and the Emperor no longer wields real power.
>
> If the Emperor and his people do not live closer together, how can I, as your sovereign, properly discharge my duties? I have now taken into my hands the prerogative of my ancestors.[1] If henceforth there should be a man or a woman whose just rights are denied to him or her, I am accountable for such a deplorable state of affairs.
>
> In the arduous work of meeting the vicissitudes of our national existence I shall work and work till my bones ache, always standing in the forefront of my people. It shall be my constant aim to follow in the footsteps of my Imperial ancestors in promoting the welfare of the nation. It is my hope that by so doing I may acquit myself of the heavy responsibility which rests on my shoulders as your sovereign.

It will be observed that the whole utterance is conceived in the spirit of an entire devotion to the cause of the people, not in that of an autocrat who claims as his due blind obedience to his will on the part of his people. Paradoxical as it may seem the democratization of Japan commenced with the Imperial Court as the center of the movement.

Baron Hozumi, in his highly instructive work entitled *Ancestor-Worship and Japanese Law*[2] describes the fundamental principle of the Japanese Government as *theocratico-patriarchal constitutionalism.* He maintains that the gov-

[1] Tokugawa Yoshinobu, the fifteenth and the last Shogun of the Tokugawa family, tendered to the Imperial Throne his resignation of the office of Shogun and surrendered his prerogative to rule the Empire by virtue of delegated authority, on October 14, 1867. His resignation and surrender of authority was accepted and the fact formally proclaimed by Emperor Meiji on December 9, 1867, in the presence of his Ministers and court dignitaries in the Imperial Palace at Kioto.

[2] The work is in English. It was originally prepared as an address and was delivered by the author at the International Congress of Orientalists held in Rome in October, 1899. Its third and revised edition appeared in Tokio in 1913.

ernment is *theocratical,* because "the Emperor holds the sovereign power, not as his own inherent right, but as an inheritance from his divine-ancestor." "The Emperor rules over the country as the supreme head of the vast family of the Japanese nation." Hence the Baron concludes the government is *patriarchal.* "The Emperor exercises the sovereign power according to the Constitution which is based on the most advanced principles of modern constitutionalism. The government is therefore, *constitutional.*"[1]

Now let us trace some of the landmarks in the history of the phenomenal transition of Japan from a medieval feudal state in 1868 to a modern constitutional monarchy with all the forms of representative government in national, local and municipal administration.

In 1867 we see Japan under the nominal rule of the Emperor who resided in Kioto surrounded by an aristocracy of birth called *Kuge,* commonly known as the court nobles in contradistinction to the feudal lords who formed the military aristocracy. The adage of English constitutional practice, "The King reigns but does not rule," was in no country more true than in feudal Japan when she was under the régime of dual sovereignty during a period of about six hundred and eighty years from 1180 to 1867 of the Christian era. As is well described in the Imperial manifesto of March 14, 1868, the power of the Emperor was nominal, while the all-powerful chief of the military chiefs really ruled the country under authority delegated by the Emperor. The title of such all-powerful military chief was Shogun which meant generalissimo or commander in chief of the armies. The Shogun dynasties rose and fell, each succeeding Shogunate exercising sway over the realm by virtue of delegation of authority from the reigning monarch. The appointment of a Shogun with all the prerogatives which that title carried with it, was itself an act of the Imperial prerogative; but the irony of the régime was that the Imperial prerogative was and had to be exercised in favor of the head of that feudal family which had subjugated all the rest of the feudal chiefs in the realm. The last period of the Shogunate was that of the Tokugawa family, which lasted for two hundred and sixty-eight years.

Thus in 1867 the Emperor of Japan nominally reigned in Kioto, but the real government of Japan which had in its hand diplomatic relations with foreign countries, the command over the army and the navy, the right of coinage and of working gold, silver and copper mines, as well as the administration of Buddhist and Shinto shrines and of justice in all important cases, was the government of the Tokugawa Shogun. The seat of that government was Yedo, now called Tokio. Important measures of policy were either first submitted by the government to the Imperial Court at Kioto for Imperial approval before they were

[1] See pages 87–88 of the third edition.

executed, or were merely reported for information after they were carried out. The procedure made little difference, for if the measure was submitted in advance the Imperial Court was expected to give the imprimatur of approval to every measure recommended by the Shogunate government. The city of Yedo with the surrounding districts, as well as many other strategically and economically important places in the Empire, were placed under the direct rule of the government. The rest of the country was divided as fiefs among the feudal chiefs who were either relatives or vassals of the Tokugawa family as well as among those who were originally rivals but had pledged themselves to be loyal supporters of that régime. The number of such fiefs or feudal dominions amounted to more than two hundred and seventy, each of which was a small kingdom governed by the respective feudal lord subject to the overlordship of the Tokugawa Shogun. The surrender to the Emperor by the Tokugawa Shogun in 1867 of the *de facto* sovereignty directly exercised by his government over important territory in the Empire and of the overlordship exercised over the dominions of his relatives, vassal chiefs and other semi-independent feudal chiefs, struck the very root of the entire régime. Theoretically this was merely a political change, the renunciation of the hereditary office of Shogun by Tokugawa Yoshinobu, the fifteenth Shogun of the Tokugawa Family.[1]

If one of the allied feudal lords who combined to declare war on Tokugawa Yoshinobu under a sealed mandate of the Emperor at Kioto could have succeeded in ascending the throne of the Shogun left vacant by the abdication of the latter on October 14, 1867, the régime of dual sovereignty would have persisted in Japan. Such an eventuality was, however, made impossible by the nature of the movement which culminated in the downfall of the Tokugawa Shogunate.

The movement was started as a revival of Imperialism. It was justly argued that the dismemberment of the sovereignty of Japan into nominal and real sovereignty was nothing short of high treason. The nation must restore Imperial power to where it rightly belonged, was the battle cry. The success of the revolution against the then established order of things was the restoration of the real régime of Imperialism as it existed in Japan prior to 1180 A. D.

If the overlordship of Tokugawa over the Empire was an act of treason against the legitimate sovereignty, then the exercise of lordship by the two hundred and seventy-odd feudal chiefs over their dominions, their vassals and other inhabitants of such dominions, was equally incompatible with the integral maintenance of the Imperial prerogative. The Emperor was not only the sovereign of all the people of Japan then living, but was the lineal descendant of the sovereigns of their ancestors, and was moreover the head of the Imperial house

[1] See *History of the Political Institutions in the Meiji Era*, by Viscount Kiyoura, Tokio, 1899, page 9. The work is in Japanese and has not been translated into any foreign language.

which was older than the history of Japan and stood to *all* the families in the Empire in the relation of the main family to the branch families.[1]

According to the Japanese conception of things there may be distinction among men in the degree of honors accorded to each by reason of their personal attainments, or by reason of descent, that is to say, of the personal attainments of their forebears. The intrusion of one or more individuals between the Emperor who is the head of the nation, on the one hand, and the people of Japan, who are equally his subjects, is inconsistent with the conception of sovereignty vested in the head of the Imperial family.

Thus, paradoxical as it may seem, the restoration of Imperialism was the first step onward in the modernization of Japan, for so long as the country was feudal there could be no basis for constitutional limited monarchy.

Until July 14, 1871, the decentralization of Japan with the ancient feudal chiefs as the governors of their respective dominions continued, excepting such localities as were under the immediate administration of the Tokugawa government which became subject to the direct control of the Imperial Government in 1867.

On July 14, 1871, an Imperial manifesto was issued abolishing the régime of administration of the ancient domains by their respective feudal lords, and such domains were either united or divided up into smaller parts to form convenient administrative units. This is the origin of the modern local government system of Japan.

In April, 1868, an organization of government was adopted, at the head of which stood a body called the Council of State (*Giseikwan*). The Council had two chambers, the higher and the lower. The higher chamber was what we now would call the Cabinet, except that in addition to its executive function, it was clothed with legislative duties. It promulgated laws upon the approval of or in obedience to the command of the Emperor. Broad lines of policy were deliberated upon, subject to the approval or veto of the Emperor, such for instance as the conclusion of treaties with foreign Powers, the declaration of war, or the restoration of peace.

The lower chamber was composed of delegates commissioned by the chiefs of the local governments who were at that time, except as already noted, the feudal lords of the ancient régime. Herein lies the beginning of modern representative government in Japan. In January, 1868, the Emperor Meiji took the oath that "Widely representative institutions for deliberation shall be estab-

[1] See Baron Hozumi, *Ancestor-Worship and Japanese Law*, 3d edition, Tokio, 1913, pages 88 and 102 to 105.

See also *The Soul of the Far East* by Percival Lowell, published by Houghton, Mifflin Co., 1898. On page 36 that acute observer on Japan says, "The Empire is one great family; the family is a little Empire."

lished, and the affairs of state shall be determined in accordance with public opinion"; and within a period of four months such a deliberative assembly was constituted, the members of which were appointed not by the central government but by the chiefs of local governments who continued to retain a large measure of autonomy within their former dominions. The function of this body was consultative only, but all important questions such as the conclusion of treaties with foreign nations, the declaration of war or conclusion of peace, taxation, military service, etc., were submitted to its deliberation by the upper chamber. This was therefore a means of ascertaining what at that time was the only legitimate public opinion, namely, the views of the local governments which constituted in a sense *imperio in imperio.* By the organization of April, 1868, a judiciary was created to be occupied solely with the administration of justice and with matters of police.

In July, 1869, the organization was more or less changed, but the lower chamber of the Council of State was continued under the name of the Assembly. The members were not commissioned to sit in this Assembly by the central government, but a member was selected by the chief of each local government from among the officials of that government. The term of office of the members was four years, and every two years one-half of the total number went out and new men were sent to take the places vacated. The meetings of the Assembly were held on stated days of every month, and its deliberations were open to the public. It was the prerogative of the Assembly to receive petitions from people at large not on matters concerning themselves individually or affecting the interest of certain localities only, but on the broad lines of policy of the Empire. Such petitions when deemed worthy of official attention were transmitted to Daijogwan which was the highest executive body immediately subordinate to the Emperor.[1]

All these changes are carefully described by Viscount Kiyoura in his work entitled *History of the Political Institutions in the Meiji Era*, published in Tokio in 1899. That work is in Japanese, and no translation into any European language has been made.

In July, 1871, the form of government was remodeled. Two chambers were created under the office of the Prime Minister and were respectively called the Left and the Right Chamber. Laws were promulgated by the Prime Minister in obedience to the command of the Emperor, but it was the duty of the Left Chamber to take the initiative in the legislative work by submitting draft laws to the Prime Minister, as well as to deliberate and pass judgment upon draft laws submitted by the Premier. The Right Chamber was the meeting hall

[1] See Viscount Kiyoura, *History of the Political Institutions in the Meiji Era*, page 19.

of the chiefs of the executive departments. Measures passed by the Left Chamber which affected the executive branch of the government were, therefore, submitted by the Prime Minister for advice to the Right Chamber. So *vice versa* matters passed by the Right Chamber regarding which the Prime Minister thought it wise to call for an expression of the legitimate public opinion of the day, were submitted to the deliberation of the Left Chamber. The Prime Minister, subject to the command of the Emperor, was the sole judge as to the wisdom of submitting a draft law for deliberation to the Left Chamber and of adopting or rejecting any measure recommended by either chamber.

From December 3 of the lunar calendar in the year 1872 A.D., which was January 1, 1873, Japan adopted the Gregorian calendar, so that the days and the months of all the dates I have given prior to that date are the days and the months of the lunar calendar, while the days and the months of all subsequent dates correspond precisely with the dates of the Gregorian calendar.

In April, 1875, the Chambers of the Left and of the Right were abolished, and a Senate composed of members appointed by the Crown was established. The Senators were appointed from among (a) the nobles, that is to say, from among the ancient feudal lords and the "court nobles." (b) higher officials of the government, (c) men who had rendered distinguished services to the state, and (d) men with profound knowledge of political science and law. This institution was therefore the embryo of the House of Peers which first came into existence in 1890 when the Imperial Diet was opened under the Constitution of the Empire. Thus the Senate which was created in 1875 was formally dissolved by the Emperor on October 20, 1890. The function of the Senate was—

1. To deliberate and pass judgment upon the draft laws submitted to it by the Cabinet in obedience to the Imperial Command.
2. To recommend to the Crown, of its own initiative, the adoption of legislative measures which the Senate deemed it wise to enact into laws.
3. To accept petitions from any person or persons praying for the enactment of laws on any subject.

The foregoing is a brief retrospect of the gradual adoption in Japan of an upper chamber of the legislature. Now, turning to the development of a more representative institution in the central government of Japan, I would state that in May, 1874, the Assembly of Local Governors was convened at Tokio. With the complete abolition of feudalistic local governments on July 14, 1871, the ancient feudal lords ceased to be the governors of their respective ancient domains. In 1874, therefore, all the local governors were civil functionaries appointed by the central government. The Assembly under review was composed entirely of local governors, and was convened at Tokio at least once a

year. If necessary it was called to meet in special sessions. The questions were submitted, for deliberation and advice, in the name of the Emperor, whose prerogative it was to adopt or to reject the recommendations of the Assembly. There was a standing instruction to the local governors that in taking part in the debate of the Assembly they were to regard themselves *as the representatives of the people* inhabiting the territory under their respective jurisdictions. The local governors were assured that they were not to be questioned or held responsible outside the House for whatever they might say at the meetings of the Assembly. While therefore the local governors were under the control and supervision of the Minister of State for Home Affairs in the discharge of their duties as the administrators of the respective provinces or prefectures assigned to them, they were nevertheless permitted to criticize the domestic policy of the central government in the Assembly as much as they wished to do. This may, therefore, be said to be the beginning of the representative system in the central government of Japan.

The session held in December, 1880, was the last of the sessions of the Assembly of Local Governors. Even now meetings of local governors are held in Tokio once every year, but the meaning of the meeting has changed since 1881. Up to 1881 the local governors were convened *as the representatives of the people* living in their respective prefectures. Since that date they have been convened to meet in Tokio as officials representing the central government in the provinces. The reason of this change is that in July, 1878, local assemblies were created by law, one in each prefecture; that is to say, every administrative district that had a local governor now had a local assembly which was a representative body elected by the people of that district. Simultaneously with the creation of local assemblies for prefectures, assemblies for smaller administrative units were created one for each unit, that is to say, a city assembly for a city, a town assembly for a town, and a village assembly for a village. The members of these bodies were all elected by the ballots of the people entitled to vote in the territory covered by each city, town or village, as the case might be.

The power of the local assemblies created in 1878 was as follows:

1. To vote the budget of the expenditures to be defrayed by local taxation, and to determine the method of the levy and collection of local taxes.
2. To receive from the governor and to examine reports on the disbursements made out of the revenue derived from local taxation.
3. To express opinion on its own initiative to the government regarding matters touching the interest of the respective prefectures.
4. To express opinion in answer to questions submitted by the governor regarding matters touching the interest of the prefecture.
5. To determine rules governing its deliberation, that is to say, its own by-laws.

On February 11, 1889, the Constitution of Japan was promulgated, which took effect from November, 1890, upon the opening of the national parliament called the Imperial Diet.

In May, 1890, laws of the organization of prefectures, of counties, as well as of cities, towns and villages, were promulgated. These laws were later amended, but were all based on the principle that the prefectures, the counties as well as the cities, towns and villages, were self-governing corporate bodies. Article 2 of the present Law of Organization of Prefectures provides:

> Article 2. Prefectures are juridical persons. They are subject to the supervision and control of the government, but within the limits of laws and ordinances they shall have the power to manage their own public affairs as well as such other matters as appertain to them under the provisions of a law or an ordinance or by usage and custom.[1]

In the narrow compass of a single address it is impossible to go into the details of the various representative institutions which exist in Japan for the purposes of government, both national and local. Let me conclude by giving you some data relating to the organization of the House of Representatives of the Imperial Diet, which corresponds to the House of Commons of the British Parliament, and of the Local Assemblies.

The number of seats in the House of Representatives is 381. Of the total number 76 members are returned by large cities while the rest of the Empire, excluding Formosa and Corea but including Hokkaido and Loochoo Islands, return 305 members.

The suffrage for the election of members of the House of Representatives is limited to Japanese male subjects of twenty-five years of age or more, who have had their domicile continually within the electoral district for a period of at least one year prior to the time fixed for the making of the roster of electors, and who moreover satisfy one or the other of the following property qualifications:

> 1. That the person had paid national land tax amounting to ten yen or more for a period of not less than one year preceding the time fixed for the making of the roster of electors, and that he continues so to pay, or
> 2. That the person had paid direct national tax, other than land tax, amounting to ten yen or more, or had paid a sum of ten yen or more as direct national tax taking his land tax as well as other direct national taxes together, for a period of two years preceding the time fixed for the making of the roster of electors, and that he continues so to pay.

In the case of succession, upon the death of the head of a family, the amount of taxes paid by the deceased is, for the purpose of qualification for election,

[1] The Law of the Organization of Prefectures now in force is Law No. 64 of March 16, 1899, as amended by Law No. 2 of 1908 and Law No. 35 of 1914.

regarded as the taxes paid by the heir. The sum of ten yen is equal to five dollars of the Canadian or American currency, so that the tax qualification may be said to be on the basis of a pound a year.[1]

In 1912 the population of Japan excluding Corea, Formosa and Saghalien, was 52,522,753, of which 26,544,759 were males. In that year the number of men entitled to vote within the same area was 1,503,968. The votes actually cast which were valid amounted to 1,388,528, while the number of votes rejected as null and void was 10,653.[2]

Regarding the qualification to become a member of the House of Representatives there is no limitation further than that the person must be a Japanese male subject of thirty years or more, and must not be under civil disability or a bankrupt or an ex-convict who has not regained the exercise of his public rights.[3]

The franchise for the election of members of a local assembly is limited to such public citizens of a city, town or village within the boundary of the prefecture as have the right to vote for the election of the members of the city, the town, or the village assembly, as the case may be, and who moreover have paid, for a period of at least one year, direct national tax amounting to three yen or more.

The tax qualification for being elected a member is higher than that for franchise. In order to be eligible the man must have paid a sum of ten yen or more as direct national tax during the preceding year and must continue to pay the same.

Conclusion

I have now traced as briefly as possible the political changes which took place in Japan from 1867 to 1900. In 1867 the right of sovereignty in the hands of the Emperor of Japan was only nominal. The country was absolutely feudal and presented a state of affairs one sees in the middle ages of European history. The internal political difficulties arising from the opening of the relations of diplomatic intercourse with foreign nations, consequent upon the advent of Commodore Perry in the Bay of Yedo, accelerated the downfall of the Tokugawa Shogunate. On October 14, 1867, Tokugawa Yoshinobu, the last of the reigning feudal overlords, surrendered to the Emperor his *de facto* sovereignty. "The people shall be made to conform themselves to law, they shall not be permitted to know what the law is" was the principle of government in ancient China. That tyrannical principle had been adopted in Japan. The Emperor Meiji upon

[1] Article 8 of the Law of Election of the Members of the House of Representatives, promulgated as Law No. 73 on March 29, 1900. One yen is equal to fifty cents or slightly more than two shillings.

[2] See *Résumé Statistique de l'Empire du Japan*, Tokio, 1917, pages 6 and 201.

[3] Articles 10 and 11 of the Law of Election of the Members of the House of Representatives.

resumption of sovereignty reversed this system, and adopted the enlightened rule that every law before it can be enforced must be made known to the people. Moreover, of his own free volition, His Majesty took the vow that means should be devised whereby legitimate public opinion might be ascertained through free expression in a representative assembly. As the forerunner of and in preparation for the opening of a representative national legislature the Emperor created a Senate in 1875, the members of which were appointed by him from among the nobles, the officials of the government and the men learned in political science as well as in law. This body served as the consultative assembly in the drafting and adoption of laws until a bicameral legislature called the Imperial Diet came into existence in 1890 in pursuance of the Constitution of the Empire promulgated on February 11, 1889. In 1878 Emperor Meiji caused local assemblies to be convened, one in each prefecture, with authority to determine the annual budget of public expenditures to be defrayed out of the revenue obtained by local taxation, as well as the means of raising such revenue. The opening of such local assemblies was designed as the preparation for the adoption of the system of local self-government which was introduced in 1890. Thus the transformation of Japan from a feudal state into a modern constitutional monarchy with local autonomy throughout the Empire was accomplished within a brief space of twenty-three years. Such transformation, however, was effected neither by one stroke nor in one period. There were successive stages in the process of transformation; and the care with which each step forward was taken would undoubtedly excite the admiration of the world, if such details were better known. It is the study of such details that enables us to discover that in the modern democratization of Japan the Imperial Throne has been the center of the movement.

Feudalism is a system of privileges. It is the military aristocracy that governs. This system of privileges was abolished in Japan by the revival of Imperialism. Imperialism carried with it the principles of democracy, for it insisted on the theory that the Emperor was the head of the great family to which all other families in the Empire stood in relation of branches to the main stock. All the people of Japan are equally the subjects of the Emperor, and no subject may claim the right to govern another excepting in special cases recognized by law, such as the exercise of parental authority by the father or mother over children. As your democracy insists on the equality of men before the law, before taxation and before the ballot box, so does the democracy of Japan insist on the equality of all before the Emperor who alone is clothed with the authority to reign subject to the Constitution. A distinguished British statesman once said that the greatest asset of the British Empire was the Crown. With equal truth may it be said that the most valuable heritage of the Japanese nation is its Imperial family.